IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21731 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARDIK RAJESH KHAMAR - Petitioner(s)
Versus
HEMCHANDRACHARYA NORTH GUJARAT UNIVERSITY-NOTICE TOBE & 3 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.
MR MITUL K SHELAT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 01/03/2007

ORAL JUDGMENT

1. Heard the learned advocates appearing for the respective parties. In light of the view that the Court is inclined to take, the petition is taken up for final hearing and disposal today. Rule. The learned advocate for the respondent is directed to waive service.

2. The facts which are undisputed lie in a narrow compass. The petitioner on the basis of marks secured at the Higher Secondary Examination applied to the respondent-University for being admitted to five year course, M.Sc. (Computer Applications and Information Technology) which is run by the respondent-University. The qualifying examination being the Higher Secondary Examination conducted by the Higher Secondary Education Board. On 23rd May, 2006 a public notice came to be published in Gujarati daily *"Gujarat Samachar"* wherein applications were invited for 70 seats for the course of M.Sc.(C.A. & I.T.). As per the said public notice, admissions were to be granted strictly on merits and the application forms were to be submitted on or before 12th June,

2006. A merit list came to be declared on 20th June, 2006 and the name of the petitioner appeared at Serial number 397.

3. Subsequently, the petitioner derived knowledge to the effect that the total strength of the seats had been increased from 70 to 191 and out of such 191 seats, 24 seats were filled up by granting admission to students who were admittedly figuring below the serial number of the petitioner in the merit list. Therefore, this petition challenging the action of respondent-University in giving go-bye to the statement made in the public notice as well as adopting a discriminatory approach

4. Upon notice being issued, the respondent-University filed affidavit-in-reply. Along with affidavit-in-reply the respondent-University has placed on record Resolution dated 19.07.1997 (Annexure-R 1/1) and Resolution dated 07.10.2005 (Annexure-R 1/2) to contend that by virtue of the said two Resolutions the Vice Chancellor was granted discretionary powers by the Executive Council of the University to grant admissions respectively against five seats per class in different courses conducted by the University, as

well as grant admission against two seats per class to the children of the employees working in respondent-University.

5. The petitioner, therefore, moved an amendment application and after being permitted by the Court amended the petition. The additional prayer was made by way of amendment seeking relief in the form of quashing and setting aside the aforesaid two Resolutions.

6. Mr.P.K.Jani, learned advocate appearing on behalf of the petitioner has invited attention to the documents on record, more particularly the brochure containing the application form and information for the purposes of admission to M.Sc.(CA & IT) Course, the public notice published in the news-paper containing total number of seats, the list of students who have been granted admission for academic year 2006-2007, as well as the two Resolutions, to contend that the University had not only not abided by the terms and conditions stated in the public notice as well as the admission form and brochure supplied to the applicant students, but had at no point of time stated that the Vice Chancellor has discretionary powers in the matter of admission on the basis of the two Resolutions. That exercise of

such discretionary powers by the Vice Chancellor amounted to discriminating between students by adopting a policy of pick and choose on the basis of recommendation made by different persons like Ministers, High Ranking Officers, etc. He, therefore, urged that in the aforesaid set of circumstances, the petitioner should be granted admission by the respondent-University and the two Resolutions should be quashed and set aside.

7. On behalf of the respondent-University Mr.M.K.Shelat invited attention to the affidavit-in-reply dated 7th December, 2006 as well as the documents accompanying the said affidavit, namely, Resolution dated 19.07.1997 and Resolution dated 07.10.2005. He, therefore, urged that there was no warrant for interfering with the process of admission which was already over and the petition was not required to be entertained at this belated stage.

8. In the public notice dated 22.05.2006 respondent-University has stated under the head '*Available Seats and Fee*' at column No.5 '*Admission shall be strictly on meri*t'. In the application form and information brochure vide paragraph No.6 admission procedure has been laid down. In all 191

students have been admitted out of which 23 (or 24) are students who have been admitted as a special case. However, it is also necessary to take note of the fact that at least nine of such students appear in the merit list above the petitioner and hence, in so far as those students are concerned the petitioner cannot have any grievance.

9. When one considers the two resolutions under challenge, it is apparent that vide Resolution dated 19.07.1997 the Vice Chancellor has been granted discretionary powers to grant admission on five additional seats over and above the total number of seats fixed for a particular course. Similarly, in so far as the second Resolution dated 07.10.2005 is concerned, the discretionary powers available with the Vice Chancellor are in relation to two seats and that too only for the children of the employees of respondent-University. Even if one proceeds on the footing that it was permissible to respondent-University to vest such discretionary powers in the Vice Chancellor, when the list of admitted students is examined in light of the averments made in affidavit in reply it becomes apparent that the Vice Chancellor has exercised discretion for granting admission to seats which are for in excess of the figure five, which is the

permissible limit in so far as first Resolution is concerned. In so far as second Resolution is concerned, there is nothing on record to suggest as to whether any of such excess seats are the two seats which are falling in the category of the special case, i.e. cases of children of the employees of respondent-University. Therefore, the admissions granted to such students by treating them as special case are liable to be cancelled on this solitary ground, namely, non-compliance with the Resolutions in exercise of the discretion vested in the Vice Chancellor by virtue of the said Resolutions; in other words, exceeding the jurisdiction vested, or abuse of the discretionary powers.

10. However, can the said Resolutions be permitted to operate. The undisputed facts reveal that in exercise of such discretion, the Vice Chancellor has admitted students not only in excess of the permitted strength *vis-a-vis* additional seats, but has used the discretionary power to accommodate students who otherwise admittedly do not figure in the merit list, namely, in the merit list at serial number where the admission in normal process would have to be cut-off. There are categorical instances amongst the 191 students who have secured percentage below the percentage of the petitioner

and who figured in the merit list below the petitioners rank. Thus it is apparent that the discretionary power is being exercised by the Vice Chancellor for admitting the students who are otherwise ineligible for being admitted if one goes strictly by merits. This becomes apparent when one looks into various recommendatory documents appearing at *Annexure-F* collectively wherein students have been admitted on the basis of recommendation of Ministers and other High Ranking Officers.

11. In the aforesaid circumstances, it is apparent that the two Resolutions are being used as a facade by the authorities who admitted non-meritorious students. In other words, the two Resolutions are being used as a shield to cloak misuse or abuse of the discretionary powers. In the event the Resolutions are permitted to operate same heart burning and discriminatory treatment would keep on being repeated year after year. Hence, for the reasons stated hereinbefore Resolutions dated 19.07.1997 and 07.10.2005 are hereby quashed. The respondent-University is directed to ensure that no such discretionary powers on the basis of any such Resolutions are vested in any authority, including the Vice

Chancellor, so as to prevent misuse of such discretionary powers in future.

12. The petitioner has in the original prayer clause also prayed for a direction to the respondent-University to grant admission to the petitioner. In the aforestated facts and circumstances the said relief cannot be granted for the simple reason that admittedly the petitioner does not figure in the merit list if the merit list is permitted to operate even upto 191 seats considering the serial number at which the petitioner is situated, i.e. at serial number 397. The petitioner cannot claim parity with those students who have been granted admissions out of turn in exercise of so called discretionary powers by the Vice Chancellor under the Resolutions. The illegality which has been committed cannot be permitted to be the basis for seeking parity by permitting further illegality. Hence, this request of the petitioner cannot be granted.

13. The petition is allowed in the aforesaid terms to the aforesaid extent. Rule made absolute. Considering the facts which have come on record and the conduct of the respondent-university, it would be in the fitness of things, if

the respondent-university is directed to pay the costs of the petition to the petitioner. The respondent-University is directed to pay costs quantified at Rs.5000/- to the petitioner.

(D.A.MEHTA, J.)

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